

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL CARBON COMPANY, a Corporation,
Appellant,

vs.

ALASKA STEAMSHIP COMPANY, a Corpora-
tion, Claimant of the Steamship "EUREKA,"
Her Engines, Boilers, Tackle, Apparel,
Furniture, etc.,

Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court for the
Western District of Washington, Southern Division.

FILED
JAN 13 1918
F. D. MONKTON,
CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

Messrs. HARRINGTON, BIGHAM & ENGLAR,
64 Wall Street, New York City, Messrs.
REVELLE & REVELLE, 605 New York Build-
ing, Seattle, Washington,
Proctors for Appellant.

Messrs. FARRELL, KANE & STRATTON, 1011
American Bank Building, Seattle, Washington,
Messrs. BOGLE, GRAVES, MERRITT &
BOGLE, 610 Central Building, Seattle, Wash-
ington, Messrs. PLATT & PLATT, Platt Build-
ing, Portland, Oregon,
Proctors for Appellee. [1*]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

No. 2049.

NATIONAL CARBON COMPANY, a Corporation,
Libellant,

vs.

Steamship "EUREKA," Her Engines, Boilers,
Tackle, Apparel, Furniture, etc.,
Respondents,

and

ALASKA STEAMSHIP COMPANY, a Corpora-
tion,

Claimant.

*Page-number appearing at foot of page of original certified Apostles
on Appeal.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare and certify to constitute the record on appeal in the above-entitled cause, the following pleadings, papers, records, documents, etc., on file in your office, which record or transcript is to be certified and forwarded to and filed in the Circuit Court of Appeals for the 9th Circuit at San Francisco, California, there to be printed or otherwise dealt with as the stipulation of proctors herein, the orders of the Court or the rules of the said Circuit Court of Appeals may require.

1. The libel.
2. This praecipe.
3. Stipulation of costs.
4. Monition.
5. Praeceptum for *alias* monition.
6. *Alias* monition.
7. Stipulation of claimant for costs.
8. Claim of ownership.
9. Bond for release.
10. Exception of claimant to libel.
11. Marshall's return of *alias* monition.
12. Amended exceptions of claimant to libel.
13. Note of exceptions for hearing.
14. Order overruling exceptions.
15. Answer of claimant Alaska Steamship Co.
16. Order extending time within which libellant may plead. [2]
17. Answer of libellant to interrogatories.
18. Memorandum decision.

19. Final decree.
20. Notice of appeal.
21. Assignment of errors.
22. Order allowing appeal.
23. Notice of filing bond on appeal.
24. The stipulations of proctors to send up the original depositions and original exhibits attached thereto, and any other original exhibits on file in your office as per the stipulation filed on Saturday, December 8th, 1917.
25. The order of the Court directing said original depositions and original exhibits to be sent up.
26. All testimony and other proof adduced in the cause including the original depositions and original exhibits attached thereto and any other original exhibits on file in said cause.
27. The stipulation of proctors and the order of Court extending the time within which apostle might be prepared and sent up to the Circuit Court of Appeals and the citation of the Court on file herein, and such other opinions of the Court wherein upon interlocutory question or finally deciding the cause and any and all other papers on file in your office necessary to the final determination of the action on appeal.

Omitting all captions and verifications excepting on the libel.

Dated this 10th day of December, A. D. 1917.

HARRINGTON BIGHAM & ENGLER,

By REVELLE & REVELLE,

G. H. REVELLE,

Proctors for Libellant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 10, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [3]

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 2049.

NATIONAL CARBON COMPANY, a Corporation,
Libellant,

vs.

Steamship "EUREKA," Her Engines, Boilers,
Tackle, Apparel, Furniture, etc.,
Respondent,

And

ALASKA STEAMSHIP COMPANY, a Corporation,
Claimant.

Statement Under Admiralty Rule No. 4.

The National Carbon Company, libellant above named, commenced an action against the Steamship "Eureka," her engines, boilers, tackle, apparel, furniture, etc., on the 8th day of July, 1916, by filing its

libel and stipulation for costs in the above-entitled court on said date. The correct title of said cause being "National Carbon Company, a corporation, Libellant, vs. Steamship "Eureka," her Engines, Boilers, Tackle, Apparel, Furniture, etc., and Alaska Steamship Company, a Corporation, Claimant."

The libel in said cause was filed on the 8th day of July, 1916, in the above-entitled court; on the 26th day of July, 1916, a monition was issued in said cause, returnable on August 16th, 1916.

That on August 16th, 1916, exceptions of the Alaska Steamship Company, claimant, were filed in said cause; on the 23d [4] day of August, 1916, the amended exceptions of the Alaska Steamship Company were filed in said cause, which exceptions were noted for hearing for September 19th, 1916. On September 19th, 1916, the exceptions of the claimant were disallowed by the Court and claimant was given thirty days to answer. That on November 16th, 1916, the answer and interrogatories of the claimant Alaska Steamship Company were filed; that on the 31st day of July, 1916, the steamship "Eureka" was attached and the claimant prepared and filed a bond in the above-entitled cause as provided by law on the first day of August, 1916. That the trial of said cause was begun on the 10th day of July, 1917, before the Hon. E. E. Cushman, Judge of the District Court above named, and continued to the 11th day of July, 1917,—that on the 10th day of October, 1917, the Court handed down its memorandum decision and on the 15th day of October, 1917, signed and filed a final decree in said cause.

That on the 20th day of October, 1917, an order allowing appeal, notice of appeal, bond on appeal, and assignment of errors were filed in the above-entitled cause.

That on the 10th day of December, 1917, there was filed in the office of the clerk of the United States District Court, a stipulation of proctors for appellant and appellee and an order of the Judge of the United States District Court directing that the original depositions and original exhibits on file in said cause be sent up to the U. S. Circuit Court of Appeals to be used by said Court on the final hearing of the cause on appeal, and further providing that said original depositions and exhibits need not be printed as required by the rules of the Court.

HARRINGTON, BIGHAM & ENGLER,

By REVELLE & REVELLE,

G. H. REVELLE,

Proctors for Appellant. [5]

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 10, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [6]

Libel.

To the Honorable the Judges of the District Court of the United States for the Western District of Washington:

The libel and complaint of National Carbon Company, a corporation, against the Steamship "Eu-reka," her engines, boilers, etc., in a cause of cargo

damage, civil and maritime, alleges and respectfully shows to this Honorable Court as follows:

First. Your libellant is a corporation, duly organized, created and existing under and by virtue of the laws of the State of New Jersey, with an office and place of business in the city of Cleveland, in the State of Ohio.

Second. The steamship "Eureka" is now or will be during the pendency of process hereunder, within the port of Tacoma and within the jurisdiction of this Honorable Court.

Third. On or about the 8th day of September, 1915, your libellant shipped and placed on board the steamship "Eureka," then lying at the port of New York, 116 barrels containing dry battery cells, in good order and condition, consigned to the libellant at San Francisco, California, to be safely carried by the said steamship "Eureka," as a common carrier, from the port of New York to the port of San Francisco, in the State of California, and there to be delivered in like good order and condition as when shipped in accordance with the valid terms of a bill of lading then and there issued for the said shipment, in consideration of an agreed freight, which was then and there prepaid by the said libellant for the carriage of the said cargo. [7]

Fourth. On or about the 14th day of September, 1915, libellant shipped and placed on board the steamship "Eureka" then lying at the port of Philadelphia, Pennsylvania, 12 boxes and 123 barrels containing dry batteries, in good order and condition, consigned to the libellant at San Francisco,

California, to be safely carried by the said steamship "Eureka," as a common carrier, to the port of San Francisco, and there to be delivered to the libellant, in like good order and condition, in accordance with the valid terms of a bill of lading then and there issued for the said shipment, in consideration of an agreed freight, which was then and there prepaid for the carriage of the said cargo.

Fifth. On or about the 16th day of September, 1915, libellant shipped and placed on board the steamship "Eureka," then lying at the port of Philadelphia, Pennsylvania, 124 barrels of batteries and 1 box of batteries (15 barrels short shipped, to follow on next steamer) in good order and condition, consigned to F. H. Murray, Los Angeles, California, to be safely carried by the said steamship "Eureka" as a common carrier to the port of San Pedro (Los Angeles) California, and there to be delivered to said F. H. Murray, agent of the libellant, in like good order and condition, in accordance with the valid terms of a bill of lading then and there issued for the said shipment, in consideration of an agreed freight, which was then and there prepaid for the carriage of the said cargo.

Sixth. Thereafter, the said steamship "Eureka" set sail from the port of Philadelphia, with the libellant's cargo aforesaid on board, bound for the ports of San Pedro (Los Angeles) and San Francisco, California, but the said steamship "Eureka" has never arrived at the ports of San Pedro (Los Angeles) or San Francisco [8] since she set out from New York and Philadelphia aforesaid, and has

wholly failed to perform the contracts of carriage above set forth and to deliver the cargo of this libellant in accordance with the terms of said bills of lading.

Seventh. On or about October 1st, 1915, your libellant heard that the Panama Canal was closed to navigation, and your libellant immediately inquired of the agents of the S. S. "Eureka" as to where she was at that time. The agents of the S. S. "Eureka" informed your libellant that the S. S. "Eureka" was detained because of the closing of the Canal, and was then at the port of Colon. Your libellant immediately notified the agents for the said steamship "Eureka" of the perishable character of the goods which your libellant had shipped on board the steamship "Eureka" as aforesaid, and your libellant offered to pay for the discharge of the said goods, and in addition to pay all costs which might be incurred by the way of restoring other cargo on the steamship "Eureka," which it might be necessary to move in order to discharge the cargo of your libellant, and demanded the delivery of its said goods at Colon. Notwithstanding the said offer of your libellant and the said notice of the perishable nature of the libellant's cargo and the said demand for delivery thereof to your libellant at Colon, those in charge of the steamship "Eureka" failed and refused to deliver said goods to your libellant. Thereupon your libellant repeatedly renewed the said request and demanded of those representing the said steamship "Eureka" that this cargo be delivered at once to your libellant at Colon, and again notified those

representing the said steamship that unless such a delivery was made the cargo would be a total loss because of its perishable nature. [9]

Eighth. Several weeks elapsed after the offers, requests and demands aforesaid were first made by your libellant, and, in the meantime, your libellant was in constant communication with those in charge of the said steamship "Eureka" renewing its offers, requests and demands, as aforesaid, from time to time, but those representing the said steamship still refused to make delivery of the said goods and nothing was done by those in charge of the said steamship "Eureka" until November 22d and 23d, when the said cargo was delivered to your libellant at New Orleans, Louisiana. It was then discovered that the said cargo was badly damaged, as a result of the failure of the said steamship to perform its contracts as aforesaid, and the failure of those in charge of her to deliver to the libellant the said goods when demand for delivery thereof was made as aforesaid.

Ninth. By reason of the premises your libellant has sustained damage in about the sum of Ten Thousand (\$10,000) Dollars, as nearly as the same can now be ascertained, no part of which has been paid although duly demanded.

Tenth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libellant prays that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, issue against the said steam-

ship "Eureka," her engines, boilers, etc., and that all persons having or claiming any interest therein be cited to appear and answer all and singular the matters aforesaid; that this Honorable Court be pleased to decree to your libellant its damages, with interest and costs, and that the said steamship "Eureka," her engines, [10] boilers, etc., be condemned and sold to satisfy the same, and that your libellant may have such other and further relief as in law and justice it may be entitled to receive.

HARRINGTON, BIGHAM & ENGLAR,
No. 64 Wall Street,
New York City.

REVELLE, REVELLE & REVELLE,
No. 605 New York Building,
Seattle, Washington,
Proctors for Libellant.

State of Washington,
City of Seattle,
County of King,—ss.

G. H. Revelle, being duly sworn, deposes and says: That he is a member of the firm of Revelle, Revelle & Revelle, proctors for the libellant herein; that he has read the foregoing libel and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief. The sources of deponent's information and the grounds of his belief are statements made to him by Messrs. Harrington, Bigbam & Englar, Attorneys for the libellant in New York City.

That the reason why this verification is not made by the libellant, is because the libellant is a corpora-

tion of the State of New Jersey and none of its officers reside within this district.

G. H. REVELLE.

Sworn to before me this 6th day of July, 1916.

[Seal of Notary]

TOM ALDERSON,

Notary Public in and for the State of Washington,
Residing in Seattle. [11]

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jul. 8, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [12]

Stipulation of Libelant for Costs.

WHEREAS, a libel was filed in this court on the 8th day of July, 1916, by the National Carbon Company, a corporation, against the steamship "Eureka," her engines, boilers, etc., for the reasons and causes in the said libel mentioned and the said National Carbon Company, a corporation, libelant above-named, and the Royal Indemnity Company of New York, a corporation, regularly and duly incorporated under and by virtue of the laws of the State of New York and authorized to do business under the laws of the State of Washington, in the said State of Washington, surety for the said libellant, hereby consenting that in case of default or contumacy on the part of libellant, execution for the sum of Two Hundred and Fifty (\$250.00) Dollars may issue against the parties hereto, their goods, chattels and lands,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED for the benefit of whom it may concern that the stipulators, the undersigned, are and each of them is hereby bound in the sum of Two Hundred and Fifty (\$250.00) Dollars, conditioned that the libellant above named shall pay all costs and expenses which shall be awarded against it by the final decree of this court or upon appeal by the Appellate Court.

[Corporate Seal]

NATIONAL CARBON COMPANY, a Corporation,

By G. H. REVELLE,

Its Attorney and Agent.

ROYAL INDEMNITY COMPANY OF NEW YORK, a Corporation,

By M. A. BAILEY,

Attorney in Fact.

By JOHN W. ROBERTS,

Attorney in Fact. [13]

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jul. 8, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [14]

Monition.

2049

Western District of Washington,—ss.

The President of the United States of America to
the Marshal of the United States for

[Seal] the Western District of Washington,
GREETING:

WHEREAS, a libel hath been filed in the United States District Court for the Western District of Washington, on the 8th day of July, in the year of our Lord one thousand nine hundred and sixteen, by National Carbon Company, a Corporation, Libellant, against Steamship "Eureka," her engines, etc., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said S. S. "Eureka" or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said S. S. "Eureka," or vessel, her tackle, etc., may for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

YOU ARE THEREFORE HEREBY COMMANDED to attach the said S. S. "Eureka," or vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held at Tacoma, in and for the Southern Division of the Western District of Washington, on the 26th day of July, A. D. 1916, at ten o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you

then and there make return thereof, together with this writ.

WITNESS, the Honorable EDWARD E. CUSHMAN, Judge of said Court, at the city of Tacoma in the Southern Division of the Western District of Washington, this 8th day of July, in the year of our Lord one thousand nine hundred and sixteen, and of our independence the one hundred and forty-first.

FRANK L. CROSBY,
Clerk.

By E. C. Ellington,
Deputy Clerk.

HARRINGTON, BIGHAM & ENGLAR,
64 Wall St., New York City.

and

REVELLE, REVELLE & REVELLE,
605 New York Block,
Seattle, Wash.,

Proctors for Libellant. [15]

Western District of Washington,—ss.

I hereby certify and return, that on the 8th day of July, 1916, I received the within Monition and that after diligent search, I am unable to find the within named defendants S. S. "Eureka," within my district.

JOHN M. BOYLE,
United States Marshal.
By FRANK ALBERT, Jr.,
Deputy United States Marshal.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jul. 26, 1916.

Frank L. Crosby, Clerk. By. F. M. Harshberger,
Deputy. [16]

*United States District Court for the Western Dis-
trict of Washington.*

No. 2049.

NATIONAL CARBON COMPANY, a Corporation,
Libellant,

vs.

S. S. "EUREKA," etc.

Praeceptum for Alias Monition.

To the Clerk of the Above-entitled Court:

You will please issue *alias* monition in above case
and deliver to marshal for service.

REVELLE & REVELLE,

Proctors. [17]

Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division. Jul. 26, 1916.
Frank L. Crosby, Clerk. By. F. M. Harshberger,
Deputy. [18]

Alias Monition.

2049

Western District of Washington,—ss.

The President of the United States of America to
the Marshal of the United States for
[Seal] the Western District of Washington,
Greeting:

WHEREAS, a libel hath been filed in the United
States District Court for the Western District of

Washington, on the 8th day of July, in the year of our Lord one thousand nine hundred and sixteen, by National Carbon Company, a Corporation, Libellant, against the steamship "Eureka," her engines, boilers, etc., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steamship "Eureka," or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship "Eureka," or vessel, her tackle, etc., may for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

YOU ARE THEREFORE HEREBY COMMANDED to attach the said steamship "Eureka," or vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held at Tacoma, in and for the Southern Division of the Western District of Washington, on the sixteenth (16th) day of August, A. D. 1916, at ten o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

WITNESS, the Honorable EDWARD E. CUSHMAN, Judge of said Court, at the city of Tacoma in the Southern Division of the Western District of Washington, this 26th day of July, in the year of our Lord one thousand nine hundred and sixteen, and of our independence the one hundred and forty-first.

FRANK L. CROSBY,
Clerk.

By F. M. Harshberger,
Deputy Clerk.

HARRINGTON, BIGHAM & ENGLAR,
64 Wall St., New York City,
and

REVELLE, REVELLE & REVELLE,
605 New York Block,
Seattle, Wash.,

Proctors for Libellant. [19]

Office of U. S. Marshal,
Western District of Washington,—ss.

In obedience to the within Monition, I attached the steamship "Eureka," her tackle, etc., therein described, on the 31st day of July, 1916, and have given due notice to all persons claiming the same that this Court will, on the 16th day of August, 1916, (if that day should be a day of Jurisdiction, if not, on the next day of Jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same. And that on the 2d day of August, 1916, I released the said vessel upon receiving a notice of bonding signed by the Clerk of the U. S. District Court.

Date, August 2d, 1916.

JOHN M. BOYLE,
U. S. Marshal.
By John T. Secrist,
Deputy Marshal.

MARSHAL'S FEES AND EXPENSES:

For Serving Attachment and Monition.....	2.00
Miles traveled, 4, at 6 cents per mile.....	.24
Preparing Notice of Seizure for posting....	
Preparing Copy of Notice of Seizure for Pub- lisher	
Publishing Notice of Seizure.....	
Posting Notice of Seizure.....	
Percentage on \$..... at per cent...	
Keeper's Fees 3 day at \$2.50 per day.....	7.50
Releasing Vessel50

Total.....	\$10.24

Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division. Aug. 21, 1916.
Frank L. Crobsy, Clerk. By F. M. Harshberger,
Deputy. [20]

Bond for Costs.

KNOW ALL MEN BY THESE PRESENTS:
That we, Alaska Steamship Company, a corpora-
tion, as Principal, and American Surety Company
of New York, a corporation organized and existing
under and by virtue of the laws of the State of New
York and authorized to transact business in the
State of Washington, as Surety, are held and firmly

bound unto the United States of America, for the use of all persons who may be interested in the premises, in the sum of Two Hundred and Fifty Dollars (\$250.00), for which payment, well and truly to be made, we bind ourselves and our successors, jointly and severally, firmly by these presents.

SIGNED, SEALED AND DATED at Seattle, Washington, this 1st day of August, 1916.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the said Alaska Steamship Company, claimant in the above-entitled action instituted in said Court by National Carbon Company, a corporation, against said steamship "Eureka," her engines, boilers, tackle, apparel, furniture, etc., shall pay all costs which by the decree granted or practice of this Court it shall become liable to pay then this obligation shall be void; otherwise, to remain in full force and virtue.

ALASKA STEAMSHIP COMPANY,
By BOGLE, GRAVES, MERRITT &
BOGLE, Its Proctors,

Principal,

AMERICAN SURETY COMPANY OF
NEW YORK,

[Corporation Seal] By S. H. MELROSE,
Resident Vice-President. [21]

E. G. GHOLSON,

Resident Assistant Secretary.

(Two cent Rev. stamp.)

(One-half cent Rev. stamp.)

Signed, sealed and delivered before me this 1st day of August, 1916.

[Seal of Notary] TOM ALDERSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

The foregoing bond is hereby approved as to form, amount and sufficiency of surety this 1st day of August, 1916.

[Seal of Collector of Customs]
W. A. FAIRWEATHER,
Deputy Collector of Customs.
O. K.—REVELLE, REVELLE & REVELLE,
Proctors for Libelant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Aug. 1, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [22]

**Claim of Alaska Steamship Co. of Ownership of SS.
"Eureka" etc.**

To the Honorable Judges of the United States District Court for the Western District of Washington, Southern Division:

Comes now Alaska Steamship Company, a corporation, intervening for itself as owner of the steamship "Eureka," her engines, boilers, tackle, apparel, furniture, etc., and makes claim to the said steamship "Eureka," her engines, boilers, tackle, apparel, furniture, etc., as the same are attached by the Marshal under process of this Court, at the instance of the National Carbon Company, a corporation; and

the said Alaska Steamship Company avers that it was in possession of the said steamship at the time of the attachment thereof, and that it was and is the true and *bona fide* owner of the said steamship.

WHEREFORE, it prays to be permitted to defend accordingly.

Dated at Seattle, Washington, this 1st day of August, A. D. 1916.

ALASKA STEAMSHIP COMPANY,

Claimant.

FARRELL, KANE & STRATTON and
BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Claimant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Aug. 1, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [23]

Bond to Release.

KNOW ALL MEN BY THESE PRESENTS, That we, Alaska Steamship Company, a corporation, as principal, and American Surety Company of New York, a corporation organized and existing under and by virtue of the laws of New York and authorized to transact business in the State of Washington, as surety, are held and firmly bound unto John M. Boyle, Marshal of the United States for the Western District of Washington, in the sum of Fifteen Thousand Dollars (\$15,000), for the payment of which sum, well and truly to be made, we bind ourselves, and our successors, jointly and severally, firmly by these presents.

Signed, sealed and dated this 1st day of August,
A. D. 1916.

WHEREAS, a libel has been filed in the District Court of the United States, for the Western District of Washington, Southern Division, on the 31st day of July, 1916, by the said National Carbon Company, against the steamship "Eureka," her engines, boilers, tackle, apparel, furniture, etc., on which process of attachment has issued, and the ship is in the custody of the said Marshal under such attachment; and the said Alaska Steamship Company has applied for the discharge of said vessel from the custody of said Marshal, and has filed a bond for claimant's costs, pursuant to the rules of practice of said Court:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the said Alaska Steamship Company shall abide by and pay all the money awarded by the final decree rendered in said Court in said cause, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

ALASKA STEAMSHIP COMPANY,
By BOGLE, GRAVES, MERRITT &
BOGLE,

Its Proctors,
Principal. [24]

[Corporate Seal]

AMERICAN SURETY COMPANY OF
NEW YORK.

By S. H. MELROSE,
Resident Vice-President.
E. G. GHOLSON,
Resident Assistant Secretary.

(Three Twenty-five Cent Rev. Stamps.)

Signed, sealed and delivered before me this 1st day of August, 1916.

[Seal of Notary] TOM ALDERSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

The foregoing bond is hereby approved as to form, amount and sufficiency of surety this 1st day of August, 1916.

[Seal of Collector of Customs.]

W. A. FAIRWEATHER,
Deputy Collector of Customs.

O. K.—REVELLE & REVELLE,
Proctors for Libelant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Aug. 1, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [25]

Exception of Alaska Steamship Company, Claimant.

To the Honorable the Judges of the District Court of the United States for the Western District of Washington, Southern Division:

Comes now Alaska Steamship Company, a corporation, claimant herein and excepts to the libel of National Carbon Company, a corporation, the libellant herein, on the ground that the libel is defective and insufficient. As a basis for said exception this claimant alleges:

First. In Article Third thereof the libellant has alleged that it shipped cargo on the steamship

“Eureka” at the port of New York consigned to the libellant at San Francisco, California, and in Article Fourth has alleged that it shipped cargo on the steamship “Eureka” at the port of Philadelphia consigned to the libellant at San Francisco, California, and in Article Fifth has alleged that it shipped cargo on the steamship “Eureka” at the port of Philadelphia consigned to F. H. Murray at Los Angeles, California.

Second. In Article Seventh the libellant has alleged that the libellant demanded delivery at Colon of all three of said shipments and that delivery to libellant was refused.

Third. In Article Eighth the libellant has alleged that all of said shipments were delivered to libellant at New Orleans, Louisiana, and that it was then discovered that said cargo was badly damaged as a result of the failure of said steamship to perform its contract and the failure of those in charge of the steamship to deliver to the libellant said goods when demand for delivery thereof was made.

Fourth. In Article Ninth the libellant has alleged [26] that by reason thereof the libellant has sustained damage in about the sum of Ten Thousand dollars (\$10,000).

Fifth. So far as is shown in the libel the libellant had no right to demand delivery of the shipment consigned to F. H. Murray at Los Angeles, California, in that said shipment was consigned to said F. H. Murray and not to the libellant.

Sixth. That the libellant has not alleged what damage, if any, resulted from the alleged failure to

deliver to it at San Francisco, California, the two shipments consigned to it at San Francisco, California, in accordance with the terms of the bills of lading, or at Colon in accordance with the alleged demand, and libellant has further failed to allege what damage, if any, was caused to the shipment consigned to said F. H. Murray, at Los Angeles, California, by reason of the alleged failure to deliver said shipment at Los Angeles, California, in accordance with the terms of the bill of lading, or at Colon in accordance with said alleged demand.

Seventh. Libellant has alleged that it has suffered damage in the sum of Ten Thousand Dollars (\$10,000) by reason of the failure to deliver all three of said shipments in accordance with the terms of the respective bills of lading, or in accordance with the libellant's alleged demand to deliver all of said shipments at Colon.

Eighth. It appears from the face of the libel that libellant was not entitled to demand delivery to it at Colon of the shipment consigned to F. H. Murray at Los Angeles, California, and is not entitled to recover for damages alleged to have resulted from such refusal.

Ninth. Libellant has failed to segregate the damage, if any, that accrued to the said shipment consigned to [27] F. H. Murray at Los Angeles, California, and the damage, if any, that accrued to the two shipments consigned to it at San Francisco, California.

PLATT & PLATT,
Proctors for Alaska Steamship Company, Claimant.

United States of America,
District of Washington,—ss.

Due service of the within exception of claimant, by certified copy thereof, as required by law, is hereby acknowledged at Seattle, Washington, this 15th day of August, 1916.

REVELLE & REVELLE,
Of Proctors for Libellant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Aug. 16, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [28]

**Amended Exceptions of Alaska Steamship Company,
Claimant.**

To the Honorable the Judges of the District Court
of the United States, for the Western District
of Washington, Southern Division :

COMES NOW Alaska Steamship Company, a corporation, claimant herein, and excepts to the libel of National Carbon Company, a corporation, the the libellant herein, on the ground that the libel is defective and insufficient. As a basis for said exception, this claimant alleges :

First. In Article Third thereof, the libellant has alleged that it shipped cargo on the steamship "Eureka" at the port of New York consigned to the libellant at San Francisco, California, and in Article Fourth has alleged that it shipped cargo on the steamship "Eureka" at the port of Philadelphia

consigned to the libellant at San Francisco, California, and in Article Fifth has alleged that it shipped cargo on the steamship "Eureka" at the port of Philadelphia consigned to F. H. Murray, at Los Angeles, California.

Second. In Article Seventh, the libellant has alleged that the libellant demanded delivery at Colon of all three of said shipments and that delivery to libellant was refused.

Third. In Article Eighth, the libellant has alleged that all of said shipments were delivered to libellant at New Orleans, Louisiana, and that it was then discovered that said cargo was badly damaged as a result of the failure of said steamship to perform its contract and the failure of those in charge of the steamship to deliver to the libellant [29] said goods when demand for delivery thereof was made.

Fourth. In Article Ninth, the libellant has alleged that by reason thereof the libellant has sustained damage in about the sum of Ten Thousand Dollars (\$10,000).

Fifth. So far as is shown in the libel the libellant had no right to demand delivery of the shipment consigned to F. H. Murray, at Los Angeles, California, in that said shipment was consigned to said F. H. Murray and not to libellant.

Sixth. That the libellant has not alleged what damage, if any, resulted from the alleged failure to deliver to it at San Francisco, California, the two shipments consigned to it at San Francisco, California, in accordance with the terms of the bills of lad-

ing, or at Colon, in accordance with the alleged demand, and libellant has further failed to allege what damage, if any, was caused to the shipment consigned to said F. H. Murray, at Los Angeles, California, by reason of the alleged failure to deliver said shipment at Los Angeles, California, in accordance with the terms of the bill of lading, or at Colon in accordance with said alleged demand.

Seventh. Libellant has alleged that it has suffered damage in the sum of ten thousand dollars (\$10,000) by reason of the failure to deliver all three of said shipments in accordance with the terms of the respective bills of lading, or in accordance with the libellant's alleged demand to deliver all of said shipments at Colon.

Eighth. It appears from the face of the libel that libellant was not entitled to demand delivery to it at Colon of the shipment consigned to F. H. Murray, at Los Angeles, California, and is not entitled to recover for damages alleged to have resulted from such refusal. [30]

Ninth. Libellant has failed to segregate the damage, if any, that accrued to the said shipment consigned to F. H. Murray, at Los Angeles, California, and the damage, if any, that accrued to the two shipments consigned to it at San Francisco, California.

Tenth. Libellant has alleged in Article Seventh of its libel that while the said steamship "Eureka" was at the port of Colon, it demanded the delivery to it at said port of the cargo shipped by libellant on said steamship, and said demand was refused, and that thereupon said libellant repeatedly renewed

the said request and demanded of those representing the said steamship "Eureka" that the cargo be delivered at once to the libellant, and again notified those representing the said steamship that unless such a delivery was made the cargo would be a total loss because of its perishable nature.

Eleventh. Libellant has alleged in Article Eighth of its libel that the said cargo was badly damaged, as a result of the failure of the said steamship to perform its contracts as aforesaid, and the failure of those in charge of her to deliver to the libellant the said goods when demand for delivery thereof was made as aforesaid.

Twelfth. Libellant has failed to set forth in its libel in what particulars, if any, the said goods so alleged to be damaged were damaged, and by what, if anything, said damage was caused.

PLATT & PLATT,

Proctors for Alaska Steamship Company, Claimant.

Address: 605 Platt Building, Portland, Oregon.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Aug. 23, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [31]

United States of America,
Western District of Washington,
Southern Division,—ss.

Due service of the within amended exceptions of claimant, by certified copy thereof, as rendered by

law, is hereby acknowledged at Seattle, Washington, this August 22, 1916.

REVELLE & REVELLE,
Of Proctors for Libelant. [32]

Note of Exceptions for Hearing.

To Platt & Platt, Attorneys for the Alaska Steamship Company, a Corporation, Claimant, and to the Alaska Steamship Company, Claimant:

You are hereby notified that the exceptions of the Alaska Steamship Company, a corporation, claimant, and the amended exceptions of the Alaska Steamship Company, claimant, will come on for hearing before the above-entitled court at Tacoma, Washington, on the 19th day of September, 1916.

You will therefore govern yourself accordingly.

REVELLE & REVELLE,
Proctors for Libellant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Sep. 13, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [33]

**Minutes of Court—September 19, 1916—Order
Overruling Exceptions to Libel, etc.**

At a regular session of the United States District Court for the Western District of Washington, Southern Division, held at Tacoma on the 19th day of September, 1916, the Honorable Jeremiah Neterer, United States District Judge, presiding, among

other proceedings had, were the following, truly taken and correctly copied from the journal of said court, to wit:

No. 2049.

NATIONAL CARBON CO.

vs.

S. S. "EUREKA," etc.

It is now ordered that the exceptions to the libel herein be and the same are hereby overruled and claimant is allowed 30 days to answer. [34]

Answer of Claimant Alaska Steamship Company.

To the Honorable Judges of the District Court of the United States for the Western District of Washington, Southern Division:

The answer of Alaska Steamship Company, a corporation, of the State of Nevada, claimant, to the libel and complaint of National Carbon Company, a corporation, against the steamship "Eureka," her engines, boilers, etc., in a cause of cargo damage civil and maritime, alleges:

First. That the allegations of the First Article of the libel are true.

Second. That the allegations of the Second Article of the libel are true.

Third. That part of the allegations of the Third Article of the libel are true; that it is true that on or about the 8th day of September, 1915, the libellant shipped and placed on board the steamship

“Eureka,” then lying at the port of New York, certain barrels containing dry battery cells consigned to the libellant at San Francisco, California, to be safely carried by said steamship “Eureka,” in accordance with the valid terms of the bill of lading then and there issued for the said shipment in consideration of an agreed freight which was then and there paid by the said libellant for the carriage of the said cargo.

That claimant has no knowledge or information sufficient to form a belief as to the truth of the allegations that libellant shipped 116 barrels of dry battery cells and that they were shipped in good order and condition, and claimant calls upon libellant to prove these facts. [35]

That claimant further answering the Third Article of the libel alleges that it is, and at all times herein mentioned has been, a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Nevada, with its principal office and place of business at Seattle, Washington; that it is now the owner of the said steamship “Eureka,” but that on September 8th, 1915, said steamship “Eureka” was owned by the Pacific Coast Steamship Company, a corporation, which had chartered said steamship to Crossett Western Lumber Company, a corporation; that said Crossett Western Lumber Company had sub-chartered said steamship to H. M. Williams & Co., Inc., a corporation, which in turn sub-chartered said steamship to Oregon-California Shipping Co., Inc., a corporation; that on September 8th, 1915, said

steamship was being loaded at the port of New York by said Oregon-California Shipping Co., Inc., under said sub-charter, and the shipment which libellant has alleged was made on said steamship on or about September 8th, 1915, was delivered to said Oregon-California Shipping Company, Inc., for carriage to San Francisco, via the Panama Canal, and said Oregon-California Shipping Co., Inc., issued to libellant its bill of lading covering said shipment and prescribing the terms of carriage, and libellant paid to said Oregon-California Shipping Co., Inc., in advance, the freight for the carriage of said shipment.

Fourth. That it is true as alleged in the Fourth Article of the libel that on or about the 14th day of September, 1915, libellant shipped on board the steamship "Eureka," then lying at the port of Philadelphia, Pennsylvania, certain boxes and barrels containing dry batteries consigned to the libellant at San Francisco, California, to be safely carried by the said steamship "Eureka" in accordance with the valid terms of the bill of lading then and there issued for said shipment in consideration of an agreed freight which was then and there prepaid for the carriage of the said cargo. [36]

That claimant has no knowledge or information sufficient to form a belief as to the truth of the allegations that libellant shipped 12 boxes and 123 barrels containing dry batteries, and that they were shipped in good order and condition, and claimant calls upon libellant to prove these facts.

That claimant further answering the Fourth Article of the libel alleges that on or about September

14th, 1915, said steamship "Eureka" was being loaded at the port of Philadelphia, Pennsylvania, by the said Oregon-California Shipping Co., Inc., under its sub-charter, execution of which claimant has alleged in the Third Article of this answer; that the shipment which libellant has alleged was made on the said steamship on or about September 14th, 1915, was delivered to said Oregon-California Shipping Co., Inc., for carriage to San Francisco, California, via the Panama Canal, and said Oregon-California Shipping Co., Inc., issued to libellant its bill of lading covering said shipment and prescribing the terms of carriage, and libellant paid said Oregon-California Shipping Co., Inc., in advance, the freight for the carriage of said shipment.

Fifth. That it is true as alleged in the Fifth Article of the libel that on or about September 15th, 1915, the libellant shipped on board the steamship "Eureka" at the port of Philadelphia, Pennsylvania, certain batteries consigned to F. H. Murray, at Los Angeles, California, to be carried by the said steamship "Eureka" as a common carrier in accordance with the valid terms of the bill of lading then and there issued for the said shipment, in consideration of an agreed freight which was then and there prepaid for the carriage of said cargo.

That claimant has no knowledge or information sufficient to form a belief as to the truth of the allegations that libellant shipped 124 barrels and 1 box containing batteries (15 barrels short [37] shipped to follow on next steamer), and that said batteries were shipped in good order and condition, and claim-

ant calls upon libellant for proof of these facts.

Claimant further answering the Fifth Article of the libel alleges that on or about September 15th, 1915, said steamship "Eureka" was being loaded at the port of Philadelphia, Pennsylvania, by said Oregon-California Shipping Co., Inc., under said sub-charter, the execution of which claimant has alleged in the Third Article of this answer: that the shipment which libellant alleged was made on said steamship on or about September 15th, 1915, was delivered to said Oregon-California Shipping Co., Inc., for carriage to Los Angeles, California, via the Panama Canal, and said Oregon-California Shipping Co., Inc., issued to libellant its bill of lading covering said shipment and prescribing the terms of carriage, and libellant paid to said Oregon-California Shipping Co., Inc., in advance, the freight for the carriage of said shipment.

Sixth. That it is true as alleged in the Sixth Article of the libel that the said steamship "Eureka" set sail from the port of Philadelphia, Pennsylvania, with certain cargo belonging to the libellant, as to the exact quantity and condition of which at the time of shipment the claimant has no knowledge or information sufficient to form a belief, as the claimant has alleged in the Third, Fourth and Fifth Articles of this answer, and it is true that the steamship "Eureka" has never arrived at the ports of San Pedro (Los Angeles) or San Francisco since she set out from the port of Philadelphia, Pennsylvania, and that said steamship "Eureka" has not delivered said shipments of the libellant to the con-

signees thereof at the respective destinations of said shipments, but the claimant alleges that all of said shipments were at the special order and request of libellant delivered to the libellant at New Orleans, as hereinafter [38] more particularly stated in the Eighth Article of this answer, and claimant further alleges that it is not true that the said steamship "Eureka" has failed to perform the contracts of carriage set forth in the Third, Fourth and Fifth Articles of the libel and of this answer, and to deliver the cargo of the libellant in accordance with the terms of said bills of lading, and claimant alleges that said steamship "Eureka" has fully performed said contracts of carriage as altered and changed at the special request and order of the libellant, as more particularly set forth in the Eighth Article of this answer.

Seventh: That it is true as alleged in the Seventh Article of the libel that on or about October 1st, 1915, the libellant heard that the Panama Canal was closed to navigation; that the libellant immediately inquired of the agents of the steamship "Eureka" as to where she was at the time, and that the agent of the said steamship "Eureka" informed the libellant that said steamship was detained because of the closing of the canal and was then at the port of Colon; that claimant has no knowledge or information sufficient to form a belief as to the truth of the allegations that libellant immediately notified the agents of the said steamship of the perishable character of the goods which libellant had shipped on its said steamship, and that libellant offered to pay for the discharge of said goods and in addition all costs

which might be incurred by way of restowing other cargo on the said steamship which it might be necessary to move in order to discharge the cargo of the libellant; that it is not true, as libellant has alleged, that the libellant demanded delivery of its said goods at Colon, and that notwithstanding said offer of the libellant and said notice of the perishable character of libellant's cargo and said demand for delivery thereof to libellant at Colon those in charge of the steamship "Eureka" failed and refused to deliver said goods to the libellant; that it is also not true that the libellant [39] repeatedly renewed said requests and demanded of those representing the steamship "Eureka" that libellant's cargo be delivered at once to libellant at Colon and that libellant notified those representing said steamship that unless such a delivery was made the cargo would be a total loss because of its perishable nature.

That the true facts are that said steamship "Eureka," bound as hereinbefore set forth from the port of Philadelphia, Pennsylvania, via the Panama Canal, to the ports of San Pedro (Los Angeles) and San Francisco, California, was detained on the Atlantic side of the Panama Canal by a slide which closed said canal to navigation, and made it impossible for said steamship to further continue her voyage as contemplated; that at first it was expected that said canal would be closed for only a few days, but it later became apparent that it would probably remain closed for some time.

That the bills of lading that had been issued by said Oregon-California Shipping Co., Inc., for the

whole cargo of said steamship "Eureka" and for all said shipments of the libellants in particular contained, among others, the following conditions:—

"1. It is mutually agreed that the carrier shall have liberty to convey goods in craft and/or lighters to and from the steamer at the risk of the owners of the goods; and in case the steamer shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamer; that the carrier shall not be liable for loss or damage occasioned by barratry of the Master or crew; by arrest or restraint of princes, rulers or people, revolutions, lock-outs, labor disputes or labor disturbances of any kind; by breakage of shaft, or the consequences of any damage to or defect in the boilers or machinery; that the carrier shall not be liable for loss or damage occasioned by causes beyond his control, or accidents of navigation of whatsoever kind, or any errors of management (even when occasioned by the wrongful act, default, negligence or error in judgment of the stevedores, or other servants of the steamship owners, dock, graving dock, harbor or other authorities, or their representatives, not resulting, however, in any case from want of due diligence by the owners of the steamer or any of them, or by the ship's Husband or Manager); that the carrier shall not be liable for loss or damage occasioned by putrefaction, change of character,

rain, spray, drainage, loss of contents, or by explosion of any goods, whether shipped with or without disclosure of their nature, [40] or any loss or damage arising from the nature of the goods; or damage arising from other goods by stowage or contact therewith, or through leakage, smell or evaporation therefrom, provided due diligence has been used in stowage of the cargo; nor for damage during inland carriage; nor for obliteration, errors, insufficiency or absence of marks, countermarks, numberd, address or description nor for risk of craft, hulk or transshipment; nor for any loss or damage caused by the prolongation of the voyage, and that the carriers shall not be concluded as to correctness of statements herein of quality, quantity, gauge, contents, weight, or value; also that the steamer is warranted seaworthy only to the extent that the owner shall exercise due diligence to make it so."

"2. No carrier shall be liable for delay, nor in any other respect than as warehouseman, while the said property awaits conveyance from any point of transshipment, and in case the whole or any part of the property specified herein be prevented by any cause from going from port in the first steamer of the line stated leaving after the arrival of such property at the port, the carrier hereunder then in possession is at liberty to forward said property by succeeding steamer of said line, or, if deemed necessary, by any other steamer or route."

“8. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic, quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitations, and all analogous circumstances whatever, the Captain, the Company, or the Agents shall be entitled to load, discharge, transship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all risks whatsoever, and all expenses of transshipment or warehousing of Customs, including Surtaxe d’Entre P’ot, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods; even though some part of such extra expenses may be occasioned by the fault of the Captain or shipowner; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.”

That when it became apparent that the said canal would probably remain closed for some time the owners and charterers of the said steamship “Eureka” and their agents, endeavored to find some method of transshipping the cargo, of which said shipments of libellants were only a part, to its destinations, said transshipment to be made in accordance with the terms of the bills of lading issued for all of said cargo, and they also investigated the possi-

bility [41] of sending said steamship to the ports of destination via the Straits of Magellan.

That while said steamship was so detained at Colon libellant demanded and insisted that Oregon-California Shipping Co., Inc., transship the libellant's cargo immediately and that libellant would hold both said Oregon-California Shipping Co., Inc., and the owner of said steamship liable for any damage to its cargo in case said steamship should be sent via the Straits of Magellan with libellant's cargo; that libellant at no time demanded of the owners or charterers of the said steamship "Eureka," or their agents, or any of them, any delivery of its cargo at Colon, and libellant at no time offered to take delivery of its cargo at Colon, but insisted that said Oregon-California Shipping Co., Inc., transship its cargo, and claimant is informed and believes that libellant at no time was prepared to or desired to have its cargo delivered to it at Colon; that those in charge of said steamship at no time refused to deliver libellant's cargo to it at Colon.

Eighth. That it is not true as alleged in the Eighth Article of the libel that several weeks elapsed after the offers, requests and demands aforesaid were first made by the libellant and that in the meantime the libellant was in constant communication with those in charge of said steamship "Eureka," renewing libellant's offers, requests and demands from time to time, and it is not true that those representing said steamship still refused to make a delivery of said goods and that nothing was done by those in charge of said steamship until November 22d and

November 23d when said cargo was delivered to libelant at New Orleans, Louisiana; that claimant has no knowledge or information sufficient to form a belief as to the truth of the allegation that it was then discovered that said cargo was badly damaged, and claimant alleges that if the [42] libelant's cargo, or any part thereof, upon delivery to it at New Orleans was damaged, such damages, if any, was not the result of the failure of said steamship to perform its contracts, and was not the result of the failure of those in charge of her to deliver to libelant said goods when demand for delivery thereof was made as libelant has alleged.

That at all times subsequent to the libelant's demand upon the agents of the steamship "Eureka" to transship its cargo, as claimant has alleged in the Seventh Article of this answer, and until said steamship was finally ordered from Colon to the port of New Orleans, as hereinafter alleged, the owners, charterers and agents of said steamship, with the utmost diligence, investigated all means available for getting the cargo of said steamship to the ports of destination with the least possible delay; that after a most thorough and diligent investigation they found that the Panama Canal would remain closed indefinitely, and that it was necessary for the best interests of the consignors and consignees of the cargo of said steamship, including this libellant, that said steamship be diverted to the port of New Orleans, Louisiana, and her cargo transshipped from there by rail to destination; that, therefore, said Oregon-California Shipping Co., Inc., on November

5th, 1915, ordered said steamship "Eureka" to proceed forthwith to the port of New Orleans; that said steamship sailed from Colon on November 5th, 1915, with her full cargo, and arrived at New Orleans on November 12th, 1915.

That on October 24th, 1915, and prior to the time that said Oregon-California Shipping Co., Inc., ordered said steamship "Eureka" to proceed to New Orleans, said Oregon-California Shipping Co., Inc., notified by telegraph all consignees of cargo on said steamship, including libellant and said F. H. Murray, that said [43] steamship would be diverted to New Orleans for discharge of her cargo there and for transshipment thence by rail to points of destination; that libellant and said F. H. Murray received said notice on October 25th, 1915, and immediately thereafter and before said steamship left Colon for New Orleans libellant expressly consented to the diversion to New Orleans and the transshipment of all of libellant's cargo from there to destinations by rail.

That upon the arrival of said steamship at New Orleans its cargo was discharged at the Chalmette Docks in said city; that upon the arrival of the said steamship at New Orleans libellant notified said Oregon-California Shipping Co., Inc., that it would take delivery of all three of its said shipments on said steamship "Eureka" at New Orleans; that in accordance with said libellant's order and request all of libellant's cargo was delivered to libellant at said Chalmette Docks in New Orleans between the 16th and 20th days of November, 1915.

Ninth. That none of the allegations contained in the Ninth Article of the libel are true.

Tenth. That none of the allegations contained in the Tenth Article of the libel are true.

Eleventh. That the bills of lading issued by said Oregon-California Shipping Co., Inc., for each of libellant's shipments contained, among other things, the following condition:

"3. No carrier, or the property of any, shall be liable for gold, silver, precious stones or metals, jewelry, or treasure of any kind, bank notes, securities, silks, furs, laces, pictures, plate, china, glass or statuary, unless bills of lading are signed therefor, in which their nature and value are expressed and extra freight expressed and paid for the assumption of extraordinary risk nor for any loss or damage arising from any of the following causes, viz.: fire from any cause, on land or on water, jettison, ice, freshets, floods, weather, pirates, robbers, or thieves, acts of God or of the country's enemies; riots, [44] strikes, or stoppage of labor, collisions, explosions, accidents to boilers or machinery, or any latent defect in hull, machinery or appurtenances; or unseaworthiness of the ship, even existing at time of shipment or sailing on the voyage, provided the owners have exercised due diligence to make the vessel seaworthy; stranding, straining, any accident on or perils of the seas or other waters, or of steam or inland navigation; restraints of governments, legal process, claims of ownership by third par-

ties, detention or accidental delay; want of proper cooerage or mending, insufficiency of package in strength or otherwise, use of hooks, rust, dampness, loss in weight, leakage, breakage, sweat, blowing, bursting of casks or packages from weakness or natural causes, evaporation, vermin, frost, heat, smell, contact with or proximity to other goods, natural decay, or exposure to weather; nor for any act, neglect or default whatsoever of the pilots, masters, mariners or other servants or agents of the steamers, or for loss or damage of any kind on goods packed in bales or whose bulk or nature requires them to be carried on deck or on open cars, or for the condition of packages or any deficiency in the contents thereof, if receipted by the consignees as in good order; or for any injury that may happen under any circumstances to, or for the death of any living creature that may be embarked, or sent for embarkation, on board the carriers. Also, that the only conditions on which glass, earthenware, porcelain ware, china, castings and other brittle goods of a like description will be carried, is that neither the shipowner nor his servants and agents, shall be liable for any breakage which may occur, whether arising from negligence of shipowners, servants, or from any cause whatever unless as hereinbefore provided."

that if libellant's cargo was damaged in any particular or in any manner upon delivery to it at New Orleans said damage was due entirely either to the fact

that it was not shipped in good order and condition or to the leakage, evaporation or natural decay of said cargo, and no part of said damage, if any, was due to any act or neglect of said steamship "Eureka," its owners, charterers, agents, or any of them, and, on the contrary, said owners, charterers and agents, at all times used due care and diligence to deliver libellant's cargo at its destinations in the condition in which it was shipped.

Twelfth. That the owners, charterers and agents of the said steamship "Eureka" exercised due diligence to make said vessel in all respects seaworthy and properly manned, equipped and [45] supplied, and said steamship "Eureka" was seaworthy and properly manned, equipped and supplied at all times when libellant's cargo was on board said steamship on the voyage from New York and Philadelphia to New Orleans.

That libellant's cargo consisted entirely of dry battery cells which were of a perishable nature; that if libellant's cargo was damaged in any particular or in any manner upon delivery to it at New Orleans, said damage was due to the inherent defect, quality and vice of libellant's cargo, and was in no manner and no degree due to any act or neglect of said steamship "Eureka," its owners, charterers, or agents, or any of them; that libellant, by shipping said cargo on board said steamship, assumed the risk of any damage thereto and deterioration thereof due to any delay in delivery thereof not caused by any act or neglect on the part of the vessel, her owners, charterers, or agents, or any of them.

Thirteenth. That the bills of lading issued by said Oregon-California Shipping Co., Inc., for each of libellant's shipments contained, among others, the following condition:

“6. All articles named in this bill of lading are subject to charges for necessary coo- perage and repairs. No liability shall exist for wrong carriage or delivery of goods marked with initials or imperfectly marked, unless name and address of consignee be given in writing at time of shipment; such marking being agreed to be taken as proof of contributory negligence. Should it be found on the cargo being discharged, that goods have been landed without marks or with marks differing from those on the bill of lading, or with marks and numbers not distinguishable, the same shall be apportioned to the different lots, and consignee shall conform to such allotment. All claims for damage to goods must be made and the nature and extent thereof fully disclosed, in the presence of the agent of the company having the same then in custody, before they are removed from the station or wharf. Unless written demand for damage shall be made upon the carrier liable therefor, or upon the carrier which actually delivered the goods, within ten days after delivery, all claims for damage shall be taken to have been waived, and no suit shall thereafter be maintainable to recover the same. No agent or employee shall have authority to waive such demand.” [46]

that libellant on or about November 20th, 1916, and immediately upon delivery of its cargo to it at New Orleans carefully examined and inspected said cargo to ascertain whether or not said cargo or any part thereof was damaged; that libellant at no time within ten days of the delivery of its cargo to it made any written or oral claim or demand upon said Oregon-California Shipping Co., Inc., or the owner, or any charterer of said steamship, or upon any of its agents, or any of them, for damage to its cargo, or any part thereof, and by such failure to make written claim or demand within ten days after delivery of its cargo to its libellant has waived any and all right to claim that its cargo, or any part thereof, was in damaged condition when delivered to it at New Orleans.

WHEREFORE, claimant, Alaska Steamship Company, prays that the libel be dismissed and that the attachment herein be released at the cost of the libellant, and further that the libellant be required to answer, under oath, the interrogatories hereto attached.

PLATT & PLATT and
A. R. WATZEK,

Proctors for Claimant, Alaska Steamship Company.
Address: 605 Platt Building,
Portland, Oregon.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Nov. 16, 1916.
Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [47]

Interrogatories Propounded to Libellant Which It is Required to Answer in Writing Under Oath.

First Interrogatory. Upon whom and when did libellant make its alleged demand for delivery of its cargo at Colon?

Second Interrogatory. To whom did libellant demand that its cargo be delivered at Colon?

Third Interrogatory. What was the exact nature and extent of the alleged damages to libellant's cargo?

Fourth Interrogatory. Was the alleged damage to libellant's cargo due solely to the delay in the delivery of the cargo to libellant?

Fifth Interrogatory. Was the alleged damage to libellant's cargo due in whole or in part to any other cause than the alleged delay in the delivery of said cargo to libellant, and if so, to what?

PLATT & PLATT and
A. R. WATZEK,

Proctors for Claimant, Alaska Steamship Company.

United States of America,

Western District of Washington,—ss.

Due service of the within answer of claimant, by certified copy thereof, as required by law, is hereby acknowledged at Seattle, Washington, this 15 day of November, 1916.

REVELLE & REVELLE,
Of Proctors for Libellant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Nov. 16, 1916.

Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [48]

**Order Extending Time Within Which Libellant may
Plead.**

This matter coming on for an order of this Court extending the time within which the libellant may plead to the answer and interrogatories of the Alaska Steamship Company, claimant, and it appearing to the Court that the attorneys for said claimant have consented to an order extending the time within which the libellant may plead to the answer and interrogatories until the 23d day of December, 1916,—

IT IS HERE AND NOW ORDERED, ADJUDGED AND DECREED that the libellant shall have and is hereby given until the 23d day of December, 1916, within which to plead to the answer and interrogatories of the claimant, Alaska Steamship Company, a corporation.

Done in open court this 27th, day of November 1916.

EDWARD E. CUSHMAN,
Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 27, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [49]

**Answer of the Libellant to the Interrogatories
Propounded by the Claimant.**

Answering the first interrogatory, your libellant notified Messrs. L. Rubelli's Sons at Philadelphia, agents of the steamship "Eureka," in person, on October 9th and by telephone on October 15th, 16th and 19th, and in person on October 22d and 23d by and through Anson J. Mitchell, that the cargo belonging to your libellant which was laden on board the steamship "Eureka" be delivered to it for immediate transshipment. Your libellant also sent a telegram on October 25th, 1915, to the Oregon-California Shipping Company, Inc. Railway Exchange Building, Portland, Oregon, as follows:

"Confirming notice to your agents, Rubelli, Philadelphia, in person, October ninth, by telephone October fourteenth, sixteenth and nineteenth, and in person October twenty-second and twenty-third, by our Traffic Manager, A. J. Mitchell, we demand and insist our cargo valued about fifteen thousand dollars on steamer "Eureka," be transshipped immediately, our expense. Should "Eureka" containing our cargo proceed via Magellan, we will hold you and owners legally liable for value of goods and damages. Our cargo perishable and worthless unless transshipped immediately and hurried to destination. Considerable damages already accrued by reason your failure to transship in accordance our instructions October ninth.

Have informed Rubelli we will agree to proposition they wired you fourteenth.”

Answering the second interrogatory, libellant says:

Mr. A. J. Mitchell, traffic manager of the libellant, volunteered on October 9th to go to Colon for the purpose of receiving the goods. Demand was made that the goods be delivered to the libellant at Colon.

Answering the third interrogatory, libellant says.

[50]

That the nature and extent of the damage is set forth in an itemized statement annexed hereto, marked Exhibit “A.”

Answering the fourth interrogatory, libellant says:

That the said damage was due solely to the delay in delivering the cargo to the libellant.

Answering the fifth interrogatory, libellant says:

That the damage was not due in whole or in part to any other cause than the delay in the delivery of the said cargo to the libellant.

HARRINGTON, BIGHAM & ENGLAR,

Proctors for Libellant,

No. 64 Wall Street,

New York City.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Jan. 3, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [51]

**Exhibit "A" Attached to Answer of Libelant to
Interrogatories Propounded by Claimant—
Itemized Statement.**

NATIONAL CARBON COMPANY.

Mail Address, P. O. Box 400.

Cleveland, Ohio, ———.

Sold to

Oregon-California Shipping Co.

Railway Exchange Building,

Portland, Ore.

2% discount if paid
within 10 days.

Terms: From date of bill,

Net Thirty days.

Subject to sight draft
if not paid when due.

F. O. B. Factory.

In correspondence refer to

Acct.

Your order No. Your Req. No. No.

**DO NOT CHANGE THIS BILL; IF AMOUNT
NOT CORRECT PLEASE RETURN WITH
FULL ADVICE.**

Quantity.	Description.	Price.	Total.
Total brot. ford.....		4037 5 8	
2¢ per cell depreciation of market.....		915 5 0	
45775 cells			
To freight charges, Cleveland to California for replacing cells 105013 @ 1.25 per cut.....		1312 6 6	
	Total claim.....	6265 7 4	
Credit acct. expense to Washington.....		15	625074
Credit acct. 15 Bls. short.....			53197
Shipped at Phila.....			571877

Shipped via

To

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Jan. 3, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [52]

NATIONAL CARBON COMPANY.

Mail Address P. O. Box 400.

Cleveland, Ohio, Sept. 6, 1916.

Sold to

Oregon-California Shipping Co.

Railway Exchange Bldg.,

Portland, Ore.

2% discount if paid within 10 days

Terms: From date of Bill.

Net Thirty days

Subject to sight draft if not paid when due

F. O. B. Factory

In correspondence refer to

Acct.

Your order No. Your Req. No. No.

DO NOT CHANGE THIS BILL, IF AMOUNT NOT CORRECT PLEASE RETURN WITH FULL ADVICE.

Quantity.	Description.	Price.	Total.
Aug. 31, 1915,	Itemized bill attached	\$3390.69	(See Exhibit 1)
Sept. 4, 1915,	“ “ “	3642.75	(See Exhibit 2)
Sept. 4, 1915,	“ “ “	3619.70	(See Exhibit 3)

Total Value of Goods.....\$10653.14

Charges:

Freight, New Orleans to Jersey

City\$401.43

Expenses at New Orleans..... 261.81

Labor and material to put cells

in shape for shipping at

Jersey City 414.40

Expenses incidental prior to

turning goods over, item-

ized bill attached..... 137.81

(See Exhibit 4)

Total Charges..... 1215.45

\$11868.59

SHIPPED VIA—CREDIT.

To goods sold, see attached list 7831.01

TO

(See Exhibit 4037.58

5

Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division, Jan. 3, 1917.
Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [53]

EXHIBIT NO. 1.

NATIONAL CARBON COMPANY.

Mail Address P. O. Box 400.

Duplicate

Cleveland, Ohio, Aug. 31, 1915.

Sold to

National Carbon Co.

755 Folsom St.

San Francisco, Calif.

2% discount if paid
within 10 days

Terms: From date of Bill.

Net Thirty days

Subject to sight draft

if not paid when due

F. O. B. Factory.

In correspondence refer to

Your order No. Your Req. No. No.

DO NOT CHANGE THIS BILL, IF AMOUNT NOT
CORRECT PLEASE RETURN WITH FULL
ADVICE.

Quantity.	Description.	Price.	Total.
10750	2½x6 Columbia Ignitor Cells-Screw Conn	.23425	2518.19
1000	2½x6 Columbia Ignitor Cells-Screw Conn	.23425	234.25
625	2½x6 Columbia Cells-Fahn Conn.....	.2295	143.44
625	2½x6 Columbia Cells-Screw Conn.....	.2295	143.44
1500	2½x6 Columbia Ignitor Cells-Screw Conn	.23425	351.37

3390.69

Penn. Car. 33818

Shipped via

NYC RR—DL&W % Wm Heyman Foreign Frt.

Agent prepaid to New York.

To ———, City.

Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division, Jan. 3, 1917.

Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [54]

EXHIBIT NO. 2.

NATIONAL CARBON COMPANY.

Mail Address P. O. Box 400.

Duplicate

Cleveland, Ohio, Sept. 4th, 1915.

Sold to

F. H. Murray,
419 East 2nd St.,
Los Angeles, Calif.

2% discount if paid
within 10 days

Terms: From date of Bill.

Net Thirty days

Subject to sight draft
if not paid when due

F. O. B. Factory

In correspondence refer to

Acct.

Your Order No. Your Req. No. No.

DO NOT CHANGE THIS BILL, IF AMOUNT NOT
CORRECT PLEASE RETURN WITH FULL
ADVICE.

Quantity.	Description.	Price.	Total.
13500	2½x6 Columbia Ignitor Cells-Screw Conn	.23425	3162.38
500	2½x6 Columbia Ignitor Cells-Screw Conn	.23425	117.12
1000	2½x6 Columbia Cells-Fahn Conn.....	.2295	229.50
500	2½x6 Columbia Cells-Screw Conn.....	.2295	114.75
100	2½x6 Oval Columbia Cells-Screw Conn..	.19	19.00
			3642.75

NYC. 240849

Shipped Via

NYC RR—DL&W—CRR of NJ—P & R %S. Ru-
bellis Sons Philadelphia, Pa

To ———, Prepaid to Philadelphia.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Jan. 3, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [55]

EXHIBIT NO. 3.

NATIONAL CARBON COMPANY.

Mail Address P. O. Box 400.

Duplicate

Cleveland, Ohio, Sept. 4, 1915.

Sold to

National Carbon Co.

755 Folsom St.

San Francisco, Calif.

2% discount if paid within 10 days

Terms: From date of Bill Net Thirty days

Subject to sight draft of not paid when due F. O. B. Factory

In correspondence refer to

Acct.

Your Order No. Your Req. No. No.

DO NOT CHANGE THIS BILL, IF AMOUNT NOT CORRECT PLEASE RETURN WITH FULL ADVICE.

Quantity.	Description.	Price.	Total.
10750	2½x6 Columbia Ignitor Cells-Screw Conn	.23425	2518.19
1000	2½x6 Columbia Ignitor Cells-Screw Conn	.23425	234.25
625	2½x6 Columbia Cells-Fahn Conn.....	.2295	143.44
625	2½x6 Columbia Cells-Screw Conn.....	.2295	143.44
1500	2½x6 Columbia Ignitor Cells-Screw Conn	.23425	351.37
750	2½x6 Sequoia Cells.....	.2045	153.38
300	2½x6 Nay Ignitor-Screw Conn.....	.145	53.50
50	2½x6 Dry Cells-Fahn Conn.....	.30	15.00
25	2½x6 Dry Cells-Fahn Conn.....	.285	7.13
C. R.R. of N. J. No. 30796.....			3619.70
with other goods			

Shipped Via

NYC. RR—DL&W—CRR. of NJ.—P&R % S Rubellis Sons, Philadelphia, Pa.

Prepaid to Philadelphia.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Jan. 3, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [56]

NATIONAL CARBON COMPANY.

Cable Address: Cleveland, Ohio, U. S. A.

“CARBON” CLEVELAND

Mark Reply
FILE

Copy of Expense Account, Anson J. Mitchell, Trip to New Orleans, La., and New York City 11/11/15 to 12/4/15, Account Dry Battery Cells loaded on the SS. “Eureka.”

Transportation	\$ 88.25
Expenses and incidentals to packing and recovering batteries at New Orleans	57.86
Hotel and meals	100.05
Sundries	15.65

\$261.81

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 3, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [57]

EXHIBIT NO. 4.

NATIONAL CARBON COMPANY.

Mail Address P. O. Box 400.

Cleveland, Ohio, Sept. 6, 1916.

Sold to

Oregon-California Shipping Co.,
Produce Exchange Bldg.,
Portland, Oregon.

2% discount if paid
within 10 days

Terms: From date of Bill
Net Thirty days

Subject to, sight draft if
not paid when due

F. O. B. Factory

In correspondence refer to

Acct.

Your Order No. Your Req. No. No.

DO NOT CHANGE THIS BILL, IF AMOUNT NOT
CORRECT PLEASE RETURN WITH FULL
ADVICE.

QUANTITY DESCRIPTION PRICE TOTAL

Telephone calls account SS. "Eureka":

10/14/15	to Philadelphia	6.35	
10/16/15	" "	9.95	
10/19/15	" "	4.55	
11/ 1/15	" "	2.75	
11/ 8/15	" "	2.75	
11/11/15	" "	2.75	\$29.10

Telegrams account SS. "Eureka":

10/ 1/15 Rubelli Sons, Phila .40

10/25/15	Oregon-Calif Ship- ping Co., Port- land, Ore.....	3.19	
10/27/15	Do	1.69	
11/ 3/15	Rubelli Sons, Phila	.60	
11/ 3/15	Oregon-Calif Ship- ping	1.21	
11/ 4/15	Oregon-Calif Ship- ping	1.50	
11/ 5/15	Oregon-Calif Ship- ping	1.69	\$137.81
11/11/15	Kurz, Chicago.....	35	
11/11/15	Dwyer "53	11.16

TRIPS:

10/ 9/15	Trip to Phila- delphia	54.25	
10/22/15	Trip to Phila- delphia	43.30	97.55

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 3, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [58]

EXHIBIT NO. 5.

LIST OF PANAMA CANAL CELLS SHIPPED.

Date Shipped	Quantity		
Jan. 11, 1916	1125	Cells.....	\$ 235.46
12	2000	"	393.67
13	3250	"	630.87
14	4250	"	821.77

Date Shipped.	Quantity		
15	3750	“	724.63
17	625	“	118.68
18	625	“	114.63
19	125	“	31.88
20	1000	“	200.52
21	1750	“	375.00
25	375	“	82.50
27	758	“	156.24
28	1125	“	230.29
29	1375	“	281.76
31	1875	“	397.90
Feb. 1	250	“	50.57
2	3675	“	741.67
3	125	“	30.00
4	125	“	26.25
5	375	“	76.12
7	375	“	86.25
8	1750	“	356.77
9	1125	“	227.08
10	125	“	30.00
11	125	“	30.00
14	125	“	26.25
16	500	“	79.88
17	500	“	116.25
18	125	“	30.00
19	2125	“	435.68
21	625	“	107.99
24	250	“	25.50
25	375	“	79.32
26	300	“	55.50
28	500	“	102.37

National Carbon Company

Date Shipped.	Quantity		
Mar. 6	125	"	30.00
14	125	"	30.00
24	375	"	74.81
25	1000	"	209.05
27	125	"	23.13

TOTAL.....\$7,903.23

Account Goods returned:

322 Cells @ 22¢ each.....	\$70.84	
6 " @ 23¢ "	1.38	72.22

Total Value of Goods Sold.....\$7,831.01

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 3, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [59]

Due and timely service of a copy of the within answers to interrogatories is admitted this 20th day of Dec., 1916, and libellant's time to file same is extended to and including January 10th, 1917.

PLATT & PLATT,
Proctors for Claimant.

Time to except to same hereby extended to January 15, 1917.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Libellant. [60]

Memorandum Decision.

Filed Oct. 10, 1917.

HARRINGTON, BIGHAM & ENGLER, RE-
VELLE & REVELLE, for Libelant.

PLATT & PLATT, for Claimant.

CUSHMAN, District Judge.

Libelant seeks to recover on account of damage alleged to have been caused certain dry cell batteries shipped upon the "Eureka" at Philadelphia in September, 1915, for San Pedro and San Francisco, by way of the Panama Canal. The cause of the damage is alleged to have been the tropical heat at Colon, where the ship remained from October 1st until November 5th, when it proceeded to New Orleans, arriving in the latter place November 12th, where the goods in question were delivered to libelant a short time subsequent thereto.

Material parts of the bills of lading provide:

[61]

"1. It is mutually agreed that the carrier shall have liberty to convey goods in craft and/or lighters to and from the steamer at the risk of the owners of the goods; and in case the steamer shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to transship the goods to their destination by any other steamer; that the carrier shall not be liable for loss or damage occasioned by barratry of the Master or crew; by arrest or restraint of

princes, rulers or people, revolutions, lock-outs, labor disputes or labor disturbances of any kind; by breakage or shaft, or the consequences of any damage to or defect in the boilers or machinery; that the carrier shall not be liable for loss or damage occasioned by causes beyond his control, or accidents of navigation of whatsoever kind, or any errors of management (even when occasioned by the wrongful act, default, negligence or error in judgment of the stevedores, or other servants of the steamship owners, dock, graving dock, harbor or other authorities, or their representatives, not resulting, however, in any case from want of due diligence by the owners of the steamer or any of them, or by the ship's Husband or Manager); that the carrier shall not be liable for loss or damage occasioned by putrefaction, change of character, rain, spray, drainage, loss of contents, or by explosion of any goods, whether shipped with or without disclosure of their nature, or any loss or damage arising from the nature of the goods, or damage arising from other goods by stowage or contact therewith, or through leakage, smell or evaporation therefrom, provided due diligence has been used in stowage of the cargo; nor for damage during inland carriage; nor for obliteration, errors, insufficiency or absence of marks, countermarks, numbers, address or description nor for risk or craft, hulk or transshipment; nor for any loss or damage caused by the prolongation of the voyage, and that the car-

riers shall not be concluded as to correctness of statements herein of quality, guage, contents, weight, or value; also that the steamer is warranted seaworthy only to the extent that the owner shall exercise due diligence to make it so.

“2. No carrier shall be liable for delay, nor in any other respect than as warehouseman, while the said property awaits conveyance from any point of transshipment, and in case the whole or any part of the property specified herein be prevented by any cause from going from port in the first steamer of the line stated, leaving after the arrival of such property at the port, the carrier hereunder then in possession is at liberty to forward said property by succeeding steamer of said line, or, if deemed necessary, by any other steamer or route.”

“8. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic, quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitations, and all analogous circumstances whatever, the Captain, the Company or the Agents shall be entitled to load, discharge, transship, [62] put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all risks whatsoever, and all expenses of transshipment or warehousing of Customs, including Surtaxe d’Entre P’ot, and all extra expenses of whatsoever kind incurred in consequence of

the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods; even though some part of such extra expense may be occasioned by the fault of the Captain or shipowner; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul."

The primary cause of the delay at Colon is admitted to have been earth slides blocking the Canal, on account of which passage through it was prevented and forbidden by the United States Government. Libelant seeks to bring the case within an implied exception to any exemption on account of an act of God, or the provisions of the bills of lading, and invokes the rule laid down in the case of "The Martha" (35 Fed. 313), wherein it was held:

"The steamship 'Martha' put into Halifax in distress, where she was detained for repairs from October until February. The consignee of glycerine on board of her, hearing of her probable detention, demanded delivery of the glycerine at Halifax, offering to pay the full freight under the bill of lading, together with all incidental expenses, and to sign a general average bond. This was refused, and on delivery of the cargo finally in New York, the glycerine was found damaged. Held, that the vessel was liable for the damage."

The "probable detention," mentioned in the above syllabus, was for the purpose of having portions of

the broken engines made in Europe and forwarded to Halifax.

Claimant contends that the present case is distinguished from that of the "Martha" in that, in the instant case, at no time was there any certainty of a long delay of the "Eureka," at Colon and that no general average bond was tendered with the demand for delivery.

The question first to be determined is the sufficiency of the oral demand for the delivery of the goods in question to [63] libelant at Colon, which demand is claimed by libelant to have been made by its traffic manager upon L. Rubelli's Sons. It is claimed by libelant that the firm, L. Rubelli's Sons, was the general agent of the subcharterer, the Oregon-California Shipping Co., and that, therefore, a demand upon that company was sufficient.

The Oregon-California Shipping Co., is a corporation, with its principal office at Portland, Oregon. H. M. Williams was, at the times in question, its general manager. The firm, L. Rubelli's Sons, had its principal place of business at Philadelphia. H. M. Williams was in no way associated with the latter company. Charles Kurtz was general manager of L. Rubelli's Sons.

While the steamship "Eureka" is now owned by claimant, in September, 1915, she was owned by the Pacific Coast Steamship Company, a corporation, which had chartered her to the Crossett Western Lumber Company, a corporation; the latter company had sub-chartered the "Eureka" to H. M. Williams & Co., Inc., a corporation, which, in turn,

subchartered her to the Oregon-California Shipping Co., Inc., a corporation.

Upon claims for damage to the dry cell batteries being made by libelant, both L. Rubelli's Sons and Phelps Bros. & Co. (a sub-agent of L. Rubelli's Sons) wrote letters to libelant, advising it of the fact that they were only agents of the Oregon-California Shipping Co. for the purpose of soliciting and providing cargo at New York and Philadelphia for its vessels. Charles Kurz, the general manager of L. Rubelli's Sons, a witness for libelant, testified to the same effect. No written agreement was introduced in evidence defining the scope of the authority of L. Rubelli's Sons or Phelps Bros. & Co. A letterhead used by L. Rubelli's Sons was in the following form: [64]

“OREGON-CALIFORNIA SHIPPING CO., INC.

‘Quaker Line.’

Pier 16, South Wharves,

(Foot of Spruce St.)

“L. RUBELLI'S SONS, General Agents.

Chas. Kurz, General Manager,

F. W. Davis, Traffic Manager,

R. B. Bates, Ass't Traffic Manager.”

There is no testimony that libelant was misled by the designation ‘General Agents’ after the words ‘L. Rubelli's Sons’ used upon this letterhead, or that the same was so used with the knowledge of the Oregon-California Shipping Co. Mr. Kurz testifies in explanation of this:

“A. That is right, that is what we did do, the general agency that I referred to meant that we

had charge of the different sub-agents but only as to the solicitation of cargo.”

In demanding a transshipment of its goods across the Isthmus, libelant made its demand upon the Oregon-California Shipping Co. and upon L. Rubelli's Sons. The fact that a demand for delivery at Colon had been made upon L. Rubelli's Sons was communicated to the Oregon-California Shipping Co. in the following telegram:

“Philadelphia, Oct. 18, 1915.

Oregon-California Shipping Co.

National Carbon Company insist their shipments Eureka should not go via Magellan account batteries would be worthless on arrival destinations stop they offered pay all expenses discharging including loading back on board any other goods in order to forward their goods from Colon stop. We made them proposition our wire fourteenth which they state very satisfactory stop to avoid heavy claims better tranship cargo wire quick.

L. RUBELLI'S SONS.”

The reference to the proposition in the wire of the 14th did [65] not contemplate a delivery to libelant at Colon.

The above telegram was not the transmission of a demand to the principal for delivery at Colon, but the submission of a later and different proposition to tranship so that the Oregon-California Shipping Co. was not, at the time of its receipt, called upon to act upon such demand for delivery in any way, but was, rather, led to believe that it had been abandoned.

While the "Eureka" was lying at Colon, a number of telegrams passed between L. Rubelli's Sons and the captain of the "Eureka," but the captain carried out no orders involving the management of the ship or cargo given by L. Rubelli's Sons. He simply advised them of the conditions at the Canal and, in one telegram, made a suggestion on transshipment of the cargo as follows:

" * * would advise you to discharge cargo here tranship cargo Pacific Port send us back for another load it will take about seventy-five days via Strait of Magellan."

The language here used, if given the full significance of which it is capable, supports libellant's contention; but it is, I think, to be explained by reason of the fact that the Captain of the "Eureka" was looking to L. Rubelli's Sons to furnish his next cargo, when he could get rid of the cargo he had, which he was unable to move.

The telegrams during this time exchanged between L. Rubelli's Sons and the Oregon-California Shipping Co. can all be reasonably explained upon the grounds that it was to the interest of both that the cargo be got through to its destination and the "Eureka" kept in some trade, even if diverted to the West India trade, and that the former company, not only on account of the business in which it was engaged, but its location, was better situated to find another charterer or cargo than the sub-charterer, [66] the Oregon-California Shipping Co.

Late in October, Kurz, the general manager of L. Rubelli's Sons, went to Portland, Oregon—the prin-

incipal place of business of the Oregon-California Shipping Co.—from which place he wired directions to the captain of the “Eureka,” but they were not followed by the latter. The following telegram was thereafter sent the captain from Portland, on November 4th:

“Baggott, Colon:

Sail tomorrow morning to New Orleans. We will be there on arrival when are you due at destination. Keep destination strictly confidential. Telegraph us your sailing.

CALIFORNIA SHIPPING CO.

KURZ,

Charge Oregon-California Shipping Co.”

The Captain thereupon proceeded with the “Eureka” to New Orleans, where the ship was met by Mr. Kurz, manager of L. Rubelli’s Sons, and Mr. Williams, general manager of the Oregon-California Shipping Co.

This telegram I interpret as from both the Oregon-California Shipping Co. and Mr. Kurz, as the representative of L. Rubelli’s Sons. It will be noted in the signature that Kurz does not sign after the name of the company, Oregon-California Shipping Co., as would ordinarily be done if he was telegraphing on its behalf, or as its agent. The telegram says “*we* will be there” (New Orleans); that is, Kurz, as the representative of L. Rubelli’s Sons and a representative of the Oregon-California Shipping Co. (Mr. Williams.)

While L. Rubelli’s Sons may have ceased to legally represent the shippers at the time of this trouble,

yet, from the situation, it is clear that that firm might be a factor in the control of the good will of such shippers, as well as assist in finding another cargo in New Orleans for the "Eureka." That [67] company would be interested in doing all that could be done to preserve the good will of its customers—the shippers. This and the mutual advantage accruing to both companies from keeping the "Eureka" in trade explain the activities of Mr. Kurz.

As the whole equals the sum of all its parts, in determining whether the firm, L. Rubelli's Sons, was the general agent of the Oregon-California Shipping Co., it is as important to consider the character of the duties it did not perform as those it did.

In the face of a positive denial of general agency, the evidence falls far short of showing a continued course of dealing sufficient to establish the fact of such an agency, especially in view of the extraordinary happening out of which the orders given by L. Rubelli's Sons grew. There is no evidence of any single instance in which that company acted upon or settled any disputed or questioned claim against the "Eureka," or, for that matter, a claim of any kind.

The charter fairly contemplated other voyages than the one in question. There is no evidence to show but that L. Rubelli's Sons' connection ended with this voyage and the shipments they had secured therefor. Nor is there anything to show more than a general understanding that that company would, for an indefinite time, continue to provide cargo on

the vessel's trips from the Atlantic seaboard.

Such a connection is not sufficient to establish general agency. Libelant's asserted claim must, therefore, fail, and it will not be necessary to consider the numerous other questions which have been presented.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 10, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [68]

Final Decree for the Claimant.

THIS CAUSE, having come on to be heard upon the pleadings and proof adduced by the respective parties, and having been argued by the respective advocates, now, on motion of Platt & Platt, Proctors for the claimant,

IT IS ORDERED, ADJUDGED AND DECREED, that the libel herein be, and the same is hereby, dismissed, with costs, and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Alaska Steamship Company, the claimant above named, recover herein against the libellant the sum of \$191.95, fixed and allowed as costs, and that execution issue therefor, and

IT IS FURTHER ORDERED, that unless this decree be satisfied, or an appeal be taken therefrom, within the time limited and prescribed by law and the rules and practice of this court, the stipulators, for costs on the part of the libellant, cause the engagements of their stipulation to be fulfilled, or show cause within four days thereafter why execu-

tion should not issue against their goods, chattels, and lands to satisfy this decree.

EDWARD E. CUSHMAN,

Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Oct. 15, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [69]

Notice of Appeal.

To the Steamship "Eureka," etc., and the Alaska Steamship Company, a Corporation, and to Messrs. Platt & Platt and Farrell, Kane & Stratton, Attorneys for respondent and Claimant: and to the Clerk of the United States District Court:

Please take notice that the libelant above named hereby appeals from the final decree made and entered herein on the 15th day of October, 1917, to the next United States Circuit Court of Appeals for the Ninth Circuit, to be holden in and for said Circuit at the City of San Francisco, in the State of California.

Dated Seattle, Washington, October 16th, 1917.

**HARRINGTON, BIGHAM & ENGLER, and
REVELLE & REVELLE,**

By **G. H. REVELLE,**

One of the Proctors for Appellant.

Service of the within Notice of Appeal by delivery of a copy to the undersigned is hereby acknowledged

this 17th day of October, 1917.

PLATT & PLATT,
Attorney for Claimant and Respondent.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 20, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [70]

Assignment of Errors.

The libellant hereby assigns errors in the rulings and proceedings of the District Court herein, as follows:

I.

For that the Court erred in entering a final decree dismissing the libel herein.

II.

For that the Court erred in refusing to enter a decree in favor of the libellant for the damages sustained by them by reason of the acts and things done and performed by the respondent and claimants herein and the acts and things which they failed to do and perform as set forth in the pleadings herein with interest and costs and in not adjudging the respondent and its servants the master and crew of said steamship "Eureka," at fault or liable on account of things done and performed by them as set forth in said libel on file herein.

Dated Seattle, King County, State of Washington,
October 19th, A. D. 1917.

HARRINGTON, BIGHAM & ENGLER, and

REVELLE & REVELLE,

By GEO. H. REVELLE,

One of the Proctors for Libellant and Appellant.

Filed in the U. S. District Court, Western Dist. of
Washington, Southern Division. Oct. 20, 1917.
Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [71]

Order Allowing Appeal.

This matter coming on upon the application of Revelle & Revelle, represented by George H. Revelle, one of the proctors for the libellant in the above-entitled cause, for an order of this Court allowing libellant herein to appeal from the decision of this court rendered in the above-entitled cause on the 15th day of October, 1917, and the court being fully advised in the premises, it is now here

ORDERED, ADJUDGED AND DECREED, that the libellant be and it is hereby allowed to appeal from the decree of the District Court of the United States for the Western District of Washington, Southern Division, entered in the above-entitled cause on the 15th day of October, 1917, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 20th day of October, A. D. 1917.

EDWARD E. CUSHMAN,

Judge of the United States District Court for the
Western District of Washington, Southern Di-
vision.

Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division. Oct. 20, 1917.
Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [72]

Notice of Filing Bond on Appeal.

To Messrs. Platt & Platt and to Farrell, Kane &
Stratton, Attorneys for Respondent and Claim-
ant Above Named:

You will please to take notice that the bond on
appeal herein has been this day filed in the office of
the clerk of the District Court of the United States
for the Western District of Washington, Southern
Division, and executed and given by the above-named
libelant and by the Royal Indemnity Company, a
corporation authorized under the laws of the State
of Washington to do business within said State, and
within the territory in which the above-entitled court
has jurisdiction.

Yours respectfully,

REVELLE & REVELLE,

By G. H. REVELLE,

One of the Proctors for Libelant.

Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division. Oct. 20, 1917.

Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [73]

Stipulation to Send Original Deposition and Exhibits Attached Thereto to Appellate Court

IT IS HEREBY STIPULATED AND AGREED, by and between the libelant above named, the National Carbon Company, by and through its proctors, Harrington, Bigham & Engler and Revelle & Revelle, and the claimant and respondent, above named, Alaska Steamship Company by and through its proctors Messrs. Platt & Platt, that the clerk of the District Court shall send up as a part of the apostle on appeal to the United States Circuit Court of Appeals, the original depositions and the exhibits attached thereto, which depositions and exhibits were introduced in evidence by the libelant above named in support of its cause of action as set forth in its libel and which said depositions and exhibits are now on file in the office of the clerk of the United States District Court, having jurisdiction of the above-entitled cause.

IT IS FURTHER STIPULATED AND AGREED by the respective parties hereto that said original depositions and exhibits need not be printed as a part of the apostles on appeal but that the same shall be considered on the hearing of said cause by the United States Circuit Court of Appeals as a part of the record on appeal in said cause and as though the same had been printed as provided for by the rules of said court.

It is further stipulated and agreed that the order of the above-named court shall be entered by the United States District Judge ordering and directing that the same be transmitted to the U. S. Circuit Court of Appeals as herein agreed and for the purposes herein named.

Dated this 6th day of December, A. D. 1917.

NATIONAL CARBON COMPANY,

Libelant. [74]

By HARRINGTON, BIGHAM & ENGLER,

REVELLE & REVELLE,

By G. H. REVELLE,

Proctors for Libelant.

S. S. "EUREKA," etc.

ALASKA STEAMSHIP COMPANY,

Claimant and Respondent.

MESSRS. PLATT & PLATT,

By PLATT & PLATT,

Proctors for Claimant and Respondent.

**Original Order Directing Transmission of Original
Depositions and Exhibits to Appellate Court.**

THIS MATTER coming on upon the stipulation above set forth for an order of this Court directing that the original depositions and exhibits on file in this cause, be sent up to the United States Circuit Court of Appeals, and providing for said depositions to be considered by the United States Circuit Court of Appeals on appeal without the same being printed as required by the rules of court, and the Court being duly advised in the premises, it is here and now

ORDERED, ADJUDGED AND DECREED that the original depositions and exhibits on file in the

above-entitled cause be sent up to the United States Circuit Court of Appeals, on appeal by the clerk of this court, and that the said original depositions and exhibits need not be printed as a part of the apostle on appeal as required by the rules of this Court, but the same shall be considered by the United States Circuit Court of Appeals, on appeal, without the formality of printing the same, and shall constitute a part of the apostle on appeal required to be sent up on said cause.

Done in open court this 10th day of December,
A. D. 1917.

EDWARD E. CUSHMAN,
Judge. [75]

O. K. as to form.

PLATT & PLATT.

Stipulation filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 8, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

Order filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Dec. 10, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [76]

Stipulation Extending Time Within Which Record on Appeal may be Prepared and Filed With the Clerk of the U. S. Circuit Court of Appeals.

IT IS HEREBY STIPULATED AND AGREED, by and between the libelant by and through its proctors Revelle & Revelle and Harrington, Bigham & Engler, and the Alaska Steamship

Company, Claimant by and through the proctors for respondent and claimant, Messrs. Platt & Platt, that the appellant may have sixty days from the date of this stipulation within which to prepare and file with the clerk of the Circuit Court of Appeals, the record or apostle on appeal in this cause.

Dated this 29th day of October, 1917.

REVELLE & REVELLE,

By G. H. REVELLE,

Proctors for Appellant.

PLATT & PLATT,

By HUGH MONTGOMERY,

Proctors for Respondent and Claimant, Alaska Steamship Co.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Nov. 16, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [77]

Order Extending Time to File Apostles on Appeal in Appellate Court Sixty Days from October 29, 1917.

This matter coming on to be heard upon the application of the proctors for the libelant herein, the National Carbon Company, a corporation, and it appearing to the court that the libelant and claimant by and through their attorneys, have entered into a stipulation extending the time within which to prepare and file with the clerk of the Circuit Court of Appeals, the record or apostle on appeal in this cause, for sixty days from the 29th day of October, 1917, and the court being fully advised in the premises, it is now and here

ORDERED that the time within which the appellant in the above-entitled matter shall prepare and file with the clerk of the Circuit Court of Appeals the record or apostle on appeal in this cause, is hereby extended for a period of sixty days from and after the 29th day of October, 1917.

Done in open court this 16th day of November, A. D. 1917.

EDWARD E. CUSHMAN,
Judge of the U. S. District Court, Western District
of Washington, Southern Division.

Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division. Nov. 16, 1917.
Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [78]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. —.

NATIONAL CARBON COMPANY, a Corporation,
Libelant and Appellant,

vs.

Steamship "EUREKA," Her Engines, Boiler,
Tackle, Apparel, Furniture, etc.,

And

ALASKA STEAMSHIP COMPANY, a Corpora-
tion,

Claimant and Appellee.

Citation on Appeal (Copy).

To the Above-named Respondent and Claimant, Steamship "Eureka," Her Engines, Boilers, Tackle, Apparel, Furniture, etc., and the Alaska Steamship Company, a Corporation, and to Their Proctors, Messrs. Platt & Platt, and to the Clerk of the United States District Court:

You and each of you are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, within thirty days from the date hereof, pursuant to the appeal filed in the office of the clerk of the United States District Court for the Western District of Washington, Southern Division, wherein the National Carbon Company, a corporation, is appellant, and the above-named respondent and claimant are appellees and to show cause if any there be, why the decree entered against libellant and appellant and in favor of said respondent and claimant, appellee, on the 15th day of October, [79] 1917, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 10th day of December, A. D. 1917.

EDWARD E. CUSHMAN,
Judge of the United States District Court for the
Western District of Washington, Southern Division.

We, the undersigned proctors for the respondents and claimant, appellee, named in the above-entitled cause, do hereby accept service of the foregoing citation and acknowledge the receipt of a copy thereof by delivery to us on this 12th day of December, A. D. 1917.

STEAMSHIP "EUREKA," et al.,
 Respondents.
 ALASKA STEAMSHIP COMPANY,
 Claimant and Appellee.
 By PLATT & PLATT,
 Proctors for Respondent and Appellee.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 15, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [80]

Certificate of Clerk U. S. District Court to Apostles on Appeal.

United States of America,
 Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing is a true and correct copy of the record and proceedings in the case of National Carbon Company, a Corporation, Libelant, vs. Steamship "Eureka," Her Engines, Boilers, Tackle, Apparel, Furniture, etc., Respondent, and Alaska Steamship Company, a Corporation, Claimant, No. 2049, in said District Court, as required by praecipe of proctors for libelant and appellant filed and shown herein and as the originals

thereof appear on file and of record in my office in said district at Tacoma.

I further certify and return that I hereto attach and herewith transmit the original citation on appeal and the original order extending time to file the record in the United States Circuit Court of Appeals.

I further certify and return that under separate cover I am forwarding to said Circuit Court of Appeals as a part of the Apostles on Appeal all of the original depositions with the exhibits attached thereto, which were filed and introduced in evidence in the trial of said cause in said District Court, in accordance with the stipulation of proctors for both sides filed in said District Court December 8, 1917, and in accordance with the Order of Court directing the same filed in said District Court December 10, 1917, which said Stipulation and Order are shown in said Apostles on Appeal.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by and on behalf of the appellant herein, for making [81] record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate and return, 180 folios at 15¢ each.	\$27.00
Certificate of Clerk to Transcript, 3 folios at 15¢ each and seal.65
Certificate of Clerk to Depositions, 2 fo. & seal	.50

ATTEST my hand and the seal of said District Court at Tacoma, in said District this 22d day of December, A. D. 1917.

[Seal]

FRANK L. CROSBY,
Clerk.

By F. M. Harshberger,
Deputy Clerk. [82]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. —.

NATIONAL CARBON COMPANY, a Corporation,
Libellant and Appellant,
vs.

Steamship "EUREKA," Her Engines, Boiler,
Tackle, Apparel, Furniture, etc.,
Respondent,

and

ALASKA STEAMSHIP COMPANY, a Corpora-
tion,

Claimant and Appellee.

Citation on Appeal (Original).

To the above-named Respondent and Claimant,
Steamship "Eureka," Her Engines, Boilers,
Tackle, Apparel, Furniture, etc., and the Alaska
Steamship Company, a Corporation, and to
Their Proctors Messrs. Platt & Platt, and to the
Clerk of the United States District Court:

You, and each of you are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, within thirty days from the date hereof, pursuant to the appeal filed in the office of the Clerk of the United States District Court for the Western District of Washington, Southern Division, wherein the National Carbon Company, a corporation is Appellant, and the above-named respondent and claimant are appellees and to show cause if any there be, why the decree entered against libellant and appellant and in favor of said respondent and claimant, appellee, on the 15th day of October, 1917, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS The Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 10th day of December, A. D. 1917.

EDWARD E. CUSHMAN,

Judge of the United States District Court for the
Western District of Washington, Southern
Division.

We, the undersigned proctors for the respondents and claimant, Appellee, named in the above-entitled cause, do hereby accept service of the foregoing citation and acknowledge the receipt of a copy thereof

by delivery to us on this 12th day of December, A. D. 1917.

STEAMSHIP "EUREKA" et al., Respondents.

ALASKA STEAMSHIP COMPANY,
 Claimant and Appellee.
 By PLATT & PLATT,
 Proctors for Respondent and Appellee.

[Endorsed]: No. ——. In the District Court of the United States for the Western District of Washington, Southern Division. National Carbon Co., Appellant, vs. S. S. "Eureka" and Alaska Steamship Co., Respondent and Appellee. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 15, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 2049.

NATIONAL CARBON COMPANY, a Corporation,
 Libellant,

vs.

Steamship "EUREKA," Her Engines, Boilers,
 Tackle, Apparel, Furniture, etc.,
 Respondent,

and

ALASKA STEAMSHIP COMPANY, a Corporation,
 tion,

Claimant.

**Order Extending Time to File Apostles on Appeal
in Appellate Court Sixty Days from October 29,
1917.**

This matter coming on to be heard upon the application of the proctors for the libellant herein, the National Carbon Company, a corporation, and it appearing to the Court that the libellant and claimant by and through their attorneys, have entered into a stipulation extending the time within which to prepare and file with the Clerk of the Circuit Court of Appeals, the record or apostle on appeal in this cause, for sixty days from the 29th day of October, 1917, and the Court being fully advised in the premises, it is now and here

ORDERED that the time within which the appellant in the above-entitled matter shall prepare and file with the clerk of the Circuit Court of Appeals the record or apostle on appeal in this cause, is hereby extended for a period of sixty days from and after the 29th day of October, 1917.

Done in open court this 16th day of November, A. D. 1917.

EDWARD E. CUSHMAN,

Judge of the U. S. District Court, Western District
of Washington, Southern Division.

[Endorsed]: No. 2049. In the District Court of the United States for the Western District of Washington, Southern Division. National Carbon Co., vs. S. S. "Eureka" and Alaska Steamship Company. Order Extending Time. Filed in the U. S. District

Court, Western Dist. of Washington, Southern Division. Nov. 16, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

[Endorsed]: No. 3102. United States Circuit Court of Appeals for the Ninth Circuit. National Carbon Company, a Corporation, Appellant, vs. Alaska Steamship Company, a Corporation, Claimant of the Steamship "Eureka", Her Engines, Boilers, Tackle, Apparel, Furniture, etc., Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed December 26, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.